

Recommendation JB-1 we specifically provide, in dealing with the judges, that the present supplementation by the local subdivisions of judicial salaries shall cease.

THE CHAIRMAN: Are there any other questions? Delegate Clagett.

DELEGATE CLAGETT: Delegate Mudd, why is this provision necessary where we have provided that there shall be a judicial budget which shall be submitted along with the governor's budget to the General Assembly?

DELEGATE MUDD: We are mindful of the provision in the article already adopted, Delegate Clagett, for the judicial budget. We felt this was necessary, out of an abundance of caution, to mandate the requirement that the State provide the funds set forth in the budget.

THE CHAIRMAN: Are there any other questions of the Committee Chairman? Apparently there are none.

Delegate Mudd, if you will return to your seat, we will consider the Committee Recommendation.

Are there amendments to Committee Recommendation JB-2? The Chair hears none. The Chair has no amendments.

The question therefore arises on the approval of Committee Recommendation JB-2. Are you ready for the question?

*(Call for the question.)*

The question arises on the approval of Committee Recommendation JB-2. A vote Aye is a vote in favor of the recommendation. A vote No is a vote against. Cast your vote.

*(Whereupon, a roll call vote was taken.)*

THE CHAIRMAN: Has every delegate voted? Does any desire to change his vote?

*(There was no response.)*

The Clerk will record the vote. There being 90 votes in the affirmative and 4 in the negative, the Committee Recommendation JB-2 is approved.

The next item on the calendar for the Committee of the Whole is resumption of the consideration of Committee Recommendation R&P-2, and specifically sections 10, 11, and 13.

The Chair recognizes Delegate Kiefer, Chairman of the Committee, and requests that he come forward to the reading desk.

DELEGATE KIEFER: Mr. Chairman, ladies and gentlemen of the Committee, last week in considering Recommendation 10 to the R&P-2 recommendation—that is section 10, criminal jury, judge of law and fact—this Committee of the Whole voted to abolish this section. However, apparently some questions were raised with respect to the effect of this upon the ability of a judge to direct a verdict of guilty in a criminal case.

This Committee was asked to research this and to report back to this group.

Now, I am again in the position of presenting something to this Committee and having someone looking down on me—last week it was a group of labor people; this afternoon it is Judge Hammond, and I only need one of him. Two independent studies were made, and it seems to be quite conclusively established that a judge cannot direct a verdict of guilty in a criminal case where the defendant has pleaded not guilty and where there is any question at all or dispute of the facts. This is unanimous apparently.

A situation which is slightly different is the case where there is no dispute as to the fact and where the defendant in effect admits the facts. Then it is still the majority opinion, and a strong majority opinion, that this does not then give the judge leave to direct a verdict of guilty for the defendant. There is some authority the other way, but it is rather minimal.

Now, purely by hearsay, and I say it with Judge Hammond looking at me, I understand it is his informal opinion that this is not possible. The question that may disturb you more, however, is whether or not a judge in his instructions to the jury or in his conduct of the trial could so indicate or make statements or act in such a way that a jury would get from him the distinct impression as to the guilt of the defendant, and whether he could make remarks or whether he could instruct the jury along these lines.

This seems to be pretty universally not allowed because it would be a violation of due process.

We had a very recent case in Maryland, *Elmer v. State of Maryland*, in which a defendant, I think it was in Harford County, was involved in a situation where the judge was asked to state and did state that the particular witness was hostile. This was held to be a reversible error prejudicing the jury.